

Cloud Software Update

Legislation effective July 1, 2015, provides that charges for the right to access remotely prewritten software shall not be considered charges for tangible personal property under 32 V.S.A. § 9701(7). Act 51, Section G.8.

Vermont generally imposes the sales tax on retail sales of tangible personal property unless specifically exempted. 32 V.S.A. § 9771. Tangible personal property is defined to include prewritten computer software in 32 V.S.A. § 9701(7). However, the new legislation provides that software accessed solely on a cloud platform does not fall within this definition. The legislation essentially treats charges for access over the cloud as a computer service or intangible transaction for purposes of Vermont Sales and Use Tax, which generally are not subject to the sales tax unless specifically enumerated.

The new legislation addresses only software accessed remotely. Prewritten software in other forms, including download, would continue to fall under the Section 9701(1) definition of tangible personal property. Specific digital products also remain taxable. Vermont specifically imposes the sales tax on digital audio-visual works, digital audio works, digital books, and ringtones that are transferred electronically. 32 V.S.A. § 9773(8). These digital products are defined in 32 V.S.A. § 9701(46).

Brief History

The new legislation brings to a close a period of some uncertainty in this area.

- In 2010, the Department issued a technical bulletin interpreting the law as imposing tax on prewritten software regardless of how the software was accessed.
- Act 143 of 2012 imposed a moratorium on assessment of sales tax on purchases, and allowed for refunds of tax paid. The moratorium expired on July 1, 2013.
- The Department then issued a fact sheet that outlined considerations for whether a transaction involving remotely accessed software may or may not be subject to tax. The guidance lapsed as of July 1, 2014.
- The Department circulated possible draft regulations for comment, which largely described examples of transactions that were outside of taxation.
- In 2015, the Department pursued the legislation that was passed in Act 51 that all charges for remotely accessed prewritten software are outside taxation.



Disclaimer: This fact sheet is intended to provide an overview only. Vermont tax statutes, regulations, Vermont Department of Taxes rulings, or court decisions supersede information provided in this fact sheet.

Iss. 08/2015 • Pub. FS-1084